UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/C.12/1998/NGO/1
17 March 1998

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS
Eighteenth session
27 April-15 May 1998

IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the Dutch Section of the International Commission of Jurists (NJCM), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is distributed in accordance with Economic and Social Council resolution 1988/4.

[7 March 1998]

GE.98-15563 (E)

NJCM commentary on the second periodic report of the Netherlands submitted in accordance with article 16 of the ICESCR (summary)

I. INTRODUCTION

1. This document contains a summary of a commentary by the Dutch section of the International Commission of Jurists (NJCM), pertaining to the second periodic report of the Netherlands, submitted in accordance with article 16 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

2. The NJCM values the practice of the Committee on Economic, Social and Cultural Rights to invite all concerned individuals, bodies and non-governmental organizations (NGOs) to contribute relevant and appropriate information to the secretariat of the Committee. The NJCM would also like to express its appreciation of the fact that, in order to be as well informed as possible, the Committee recognizes the advantages of allowing NGOs to voice their opinion in the process of the examination of country reports, and therefore provides opportunities for NGOs to submit information to it, both in writing and in person.

3. The aim of this NJCM commentary is to bring to the attention of the Committee those issues which have not been given the concern and attention they deserve in the report of the Dutch Government. The commentary deals predominantly with the section of the report concerning the European part of the Kingdom. The Netherlands Antilles and Aruba have not been specifically surveyed by the NJCM for the purpose of this commentary. This is basically due to the fact that the NJCM does not deal with the human rights situation in the Netherlands Antilles and Aruba as part of its regular functions. Therefore, the NJCM has reservations about making comments with respect to the compliance with the Covenant obligations in these parts of the Netherlands, and a limited amount of information is thus provided in this commentary.

4. The NJCM expresses the hope that the Committee will take the remarks and questions presented to it in this commentary into consideration, and that they will reverberate in the Committee's examination of the report of the Netherlands during the Committee's session in May 1998.

II. GENERAL REMARKS

Report not submitted in due time

5. The NJCM notes with concern that the Netherlands has not succeeded in submitting this report in due time. It is seriously deplored by the NJCM that the Government of the Netherlands has still been unable to surmount the problems most States parties encounter in the preparation of reports, which have led to this delay.

6. On 29 November 1996, the NJCM devoted a seminar to the significance of economic, social and cultural rights in the Netherlands. This seminar was aimed at informing Dutch civil servants, judges and lawyers about various aspects of the ICESCR and the rights contained therein, particularly the reporting procedure of the ICESCR and the implications of the Covenant for the

Dutch judiciary and lawyers. With regard to the reporting procedure, a number of suggestions were formulated to facilitate the preparatory phase of the procedure.

7. By increasing awareness and knowledge of economic, social and cultural rights in general and of the ICESCR in particular, the NJCM hopes to contribute to improving compliance with the Covenant by the Government of the Netherlands, including the fulfilment of the reporting obligations.

Superficial and descriptive character of the report

8. The main obligation under article 2 of the Covenant is "achieving progressively the full realization of the rights recognized in the Covenant". Article 16 stipulates that States parties' reports should indicate "the progress made in achieving observance of the rights recognized therein". Furthermore, article 17 (2) allows for the inclusion of "factors and difficulties affecting the degree of fulfilment of obligations under the Covenant".

9. The NJCM would like to draw the Committee's attention to the fact that despite the sizeable volume and appearance of the Dutch report (the section on the European part alone comprising 81 pages), the substance of its contents leaves much to be desired. Although the report submitted by the Government of the Netherlands contains important information on many subjects relevant to the Committee, the opinion of the NJCM is that the report lacks information exactly on the point of the "progress made in achieving the observance of the rights".

10. In general, the report is of a rather descriptive nature and does not contain an analysis by or the opinion of the Government on the state of affairs concerning the implementation of economic, social and cultural rights, nor on the developments since the previous report. To the extent that progress has been reported, it remains unclear whether or not this was the result of a specific government policy. In addition, the report elaborately expounds upon the legislative and administrative measures taken, enumerating all possible, even vaguely relevant acts and other legislation, yet it does not meet other requirements mentioned in the Covenant. The Dutch report makes very few references to the problems and obstacles encountered in the process of (progressively) realizing the rights laid down in the Covenant, as is indicated in article 17 (2). The impact of laws - and possible side effects - is not examined.

11. At several points in the Dutch report, parts of Dutch social and economic legislation and policy are explained without giving an indication of the results of this legislation and policy. Furthermore, the report contains hardly any information on problems the Government of the Netherlands encounters in fully implementing economic, social and cultural rights, for instance problems which could arise because measures to promote the further realization of a certain right seem to conflict with other human rights. The NJCM regrets this aspect of the report as it is this kind of information that would greatly contribute to the Committee's work, particularly in developing further guidelines or general comments on the implementation of the rights enshrined in the Covenant.

The ICESCR in the Netherlands

12. With regard to the attitude towards the ICESCR and economic, social and cultural rights in the Netherlands, the NJCM would like to bring the following aspects to the attention of the Committee.

13. Both the Dutch Government and the highest judiciary organs have traditionally been of the opinion that the ICESCR and its provisions do not have direct effect in the Dutch legal order. Few cases have resulted in the acknowledgement that citizens of the Netherlands can directly invoke provisions of the Covenant before a national judge. Unfortunately, this trend does not seem to be subject to change in the foreseeable future.

14. A second related point is that the ICESCR is only marginally, if at all, taken into consideration in the legislative and policy-making process at the national level. In most ministries, the view seems to persist that the ICESCR is still but a "poor relation" of its sibling Covenant, the International Covenant on Civil and Political Rights.

15. The NJCM would like to recommend that these issues be brought to the attention of the Government of the Netherlands by the Committee.

III. CONCLUSIONS

16. In conclusion, the NJCM would like to point out to the Committee that, although the economic situation in the Netherlands is experiencing considerable growth at present, there are still serious problems to be addressed. The distance between the employed and the unemployed, between the affluent and the needy, both with regard to income as well as with regard to social and cultural participation is widening. All strata of the Dutch population, including the vulnerable groups in society such as the disabled, elderly people, ethnic minorities and women and children suffered under the economic recession in the past. Yet, in these times of relative abundance, the vulnerable groups still suffer, due to the general governmental policy to put more emphasis on the responsibility of the individual. The benefits of the economically favourable situation at present have not had an impact on the living conditions of these population groups. Measures to grant special protection to these people are scarcely taken or not fully effective.

17. The NJCM would therefore like to caution against a tendency in the Netherlands to move towards a divided society, in which the economically and socially strong are allowed to flourish, whilst the weak and the needy are systematically disadvantaged and neglected.

IV. SUMMARY OF QUESTIONS AND RECOMMENDATIONS

A. Article 6 (work)

18. The NJCM would like to request clarification as to the responsibility of the Government for the disproportionate unemployment of disabled persons and the status of possible measures with a view to improving employment of the disabled.

19. The NJCM expresses its concern about the lack of protection against discrimination on the ground of disability, and about the scattered initiatives to promote the employment opportunities of young disabled persons. The NJCM recommends that the Committee address this issue and request more information.

20. The NJCM would like a more detailed overview of the limitations which apply to non-national members of ethnic minorities wishing to access the labour market.

B. Article 7 (working conditions)

21. The NJCM would like to know what the effects are of the Decree on Working Times (Arbeidstijdenbesluit) and whether these effects actually lead to an increase of overtime work.

C. Article 9 (social security)

22. The NJCM encourages the Committee to request additional information on the problems concerning the various acts on social security and on the measures the Government of the Netherlands is planning to take to prevent poverty and social exclusion.

23. The NJCM would like to know how the Government will prevent the possibly disproportionate effects of the privatization of the sickness and labour disability system on workers with a potential sickness or impairment.

24. The NJCM would like to pose the question whether the Government is entitled to refuse minimum subsistence rights to people without a valid permit of residence, as will be the case under the soon to be adopted Matching Bill (Koppelingswet).

D. Article 10 (protection of family, mothers and children)

25. The Committee is requested to ask what measures are being taken on the issue of day-care centres for children.

26. With regard to the results of the Dutch Social Renewal Policy (Sociale Vernieuwingsbeleid), aimed at preventing the marginalization of young people from ethnic minorities, more detailed information could be requested from the Dutch Government.

27. The NJCM would like to know how the Government is intending to promote the possibilities for maternal leave in various political functions, in the light of the fact that a constitutional amendment concerning maternal leave for, inter alia, female members of Parliament was not adopted in 1995.

E. Article 11 (standard of living, particularly housing)

28. The NJCM would like to know whether the Government of the Netherlands is taking measures to prevent discrimination on the basis of, inter alia,

differences in civil status or sexual preference in the housing sphere, since it is a real threat to the security of tenure of many citizens; and whether developments in this regard are sufficiently monitored.

29. The NJCM would like to know whether the Dutch Government would be obligated under article 11 of the Covenant to provide housing for asylum seekers who have been denied asylum in the Netherlands. In particular, information is requested with regard to asylum seekers who are unable to return to their homeland due to the non-cooperation of their own Governments, and whether developments in this regard are being monitored.

F. Article 12 (health)

30. The NJCM would recommend to the Committee that information on the provision of health care to prison inmates be requested.

31. The NJCM appeals for relevant information on health-care policy with respect to illegal immigrants.

32. The NJCM request the Dutch Government to make health-care services accessible to illegal immigrants on an equal footing with other residents in the Netherlands as required by article 12 of the Covenant, especially for women and children.

33. The Committee is urged to ask the Government how it thinks it can ensure general access to general practitioners, given the fact that there is an increasing shortage of general practitioners in the Netherlands.

34. The NJCM would like to see a clarification of the omissions in the legislation concerning the mentally ill.

35. The NJCM points out that, with respect to the scope and nature of health-care insurances, the Dutch Government should ensure that the criterion "health condition" is not abused by insurance companies.

36. The NJCM would welcome additional information concerning the clarification of the Dutch Government's policy with regard to the negative effects of changes in the social security system on employees and their social insurances.

G. Article 13 (education)

37. The question is presented to the Committee whether the Netherlands legislation concerning the compulsory payment of access fees for secondary education is in conformity with its obligations.

38. The NJCM requests the Committee's opinion on the effects of the so-called "voluntary fees" for primary education, a practice which is not in accordance with the Covenant's requirement in article 13 (2) (a) of free primary education.

39. The NJCM would like to know whether a State party is acting in accordance with its obligations under the Covenant if it allows non-State actors to pay for a (small) part of the expenses for (primary) education, for instance in the form of financing by corporate companies, which might lead to inequality between schools and might compromise the independence of primary education.

40. The NJCM welcomes information on the problems encountered by the Government of the Netherlands on the availability of special education for mentally or physically disabled children.

41. The Committee is urgently requested by the NJCM to emphasize the need for clarification of the status of the necessary legislation on compulsory primary education in the Netherlands Antilles and Aruba.

H. Article 15 (culture)

42. The NJCM requests the Dutch Government to explain what measures it is taking to deal with the factors delaying the asylum-request procedure.

43. The NJCM would like to know what measures are being taken to minimize the societal and cultural seclusion of asylum seekers who are in the application process.